IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1568 OF 2006

Shri Namdev Ganpat Babar ...Appellant
Vs.
Shri Anand Gopal Babar & Ors. ...Respondents

Shri Machindra Patil for the Appellant.

CORAM : A. S. OKA, J.
DATE : JULY 20, 2006.

P.C.:

1. Heard Shri Patil appearing for the Appellant.

This First Appeal takes exception to the Judgment and Order dated 21st April, 2006 passed by the learned 2nd Additional District Judge under section 72 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act). It is well settled position of law that though the Appeal is numbered as First Appeal, it will be governed by the constraints of section 100 of the Code of Civil Procedure, 1908. The Appellant is a trustee of a Trust. Earlier the Appellant was the President. By the Change Report in dispute, the Appellant is shown only as a trustee and not as the President. The Change Report was approved by the Assistant Charity Commissioner. The present Appellant filed a Revision Application under section 70A of the said Act before the Joint Charity

Commissioner which came to be dismissed. The Application made by the Appellant under section 72 of the said Act has been dismissed by the impugned judgment and order.

2. The learned Advocate appearing for the Appellant submitted that no notice of the Annual General Meeting of the Trust was served to the Appellant. He submitted that the Change Report submitted on the basis of alleged decision taken in the Annual General Meeting was illegal. He submitted that as the Appellant was not served with the notice of the meeting, the Change Report ought not to have been accepted.

3. I have considered the submissions. Perusal of the order passed by the Joint Charity Commissioner in Revision Application shows that the contention which is being raised in this Appeal was not specifically raised before the Joint Charity Commissioner. The contention which was raised before the Revisional Authority was that Assistant Charity Commissioner has accepted the report without notice to the concerned parties. The learned Advocate appearing of the

Appellants contended that in the memorandum of the said Revision the said contention was raised. However, this is of no consequence as the said contention was not raised at the time of hearing of Revision Application. The District Court has dealt with the said contention in paragraph Nos.5 and 6 of the impugned order. The District Court noted that the said contention was raised on the basis of certain documents produced for the first time in the Application under section 72 of the said Act. The learned Additional District Judge, in my view, has rightly rejected the said contention based on the documents which were produced for the first time before him.

4. The Revisional Authority as well as the learned Additional District Judge have noted that the only effect of the Change Report is that name of the Appellant has been shown as a trustee instead of the President of the Trust.

5. No substantial question of law arises. First Appeal is dismissed. No order as to costs.

JUDGE